Safeway Stores, Inc. *and* United Food and Commercial Workers Union, Local 73R, affiliated with United Food and Commercial Workers International Union, AFL–CIO–CLC. Case 16–CA–10399

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 21 September and 28 October 1983 Administrative Law Judge Sidney J. Barban issued respectively the attached decision and amendment to decision.[1] The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Safeway Stores, Broken Arrow, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The amendment corrects an inadvertent error made in the Decision with respect to the description of the stipulated units appropriate for bargaining.

[2] The Respondent did not except to the judge's finding that its refusal to supply the Union certain information violated Sec. 8(a)(5) of the Act.

DECISION

STATEMENT OF THE CASE

SIDNEY J. BARBAN, Administrative Law Judge. This matter was submitted to the Division of Judges on a stipulated record, dated April 29, 1983, and was assigned to me by an order dated May 3, 1983, for the issuance of a decision and other appropriate action.[1] The complaint in this matter, which was issued on May 19, 1982 (all dates hereinafter are in 1982, unless otherwise noted), based on a charge filed on April 15 by United Food and Commercial Workers Union, Local 73R, affiliated with United Food and Commercial Workers International Union, AFL–CIO–CLC (herein the Union), alleges that Safeway Stores, Inc. violated Section 8(a)(5) and (1) of the National Labor Relations Act (herein the Act) by (a) "unilaterally implement[ing] an employee evaluation system . . . without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees [in an appropriate unit]" with respect to such action; and by (b) refusing the Union's request for information concerning several aspects of such action. The Respondent's answer denies the unfair labor practices alleged, but admits that the Union is a labor organization within the meaning of the Act and its status as an exclusive representative of the Respondent's employees in an appropriate unit.

On the entire record in this case, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS AND CONCLUSIONS

I. THE RESPONDENT'S BUSINESS

The Respondent, which is incorporated in the State of Maryland, operates a chain of retail food stores in various States of the United States, including stores in the area of Tulsa, Oklahoma, which the parties refer to as the Tulsa Division, with an office and place of business at Broken Arrow, Oklahoma. The Respondent's principal office is located at Oakland, California.

The Respondent, during a recent annual period, in the course and conduct of its business operations at its Oklahoma retail stores, purchased and received at such stores food products valued in excess of $50,000 directly from suppliers located outside the State of Oklahoma, and during the same period of time received gross revenues in excess of $500,000.

The Respondent admits, and I find that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ISSUES

In January 1982, the Respondent instituted a written system of annual job evaluations of food clerk employees in the appropriate units represented by the Union, unilaterally and without affording the Union an opportunity to bargain with respect to the institution or application of this procedure. As explained in more detail hereinafter, the Union requested information concerning this new system of work evaluation, and copies of the evaluations made thereunder. The Respondent has declined to furnish these materials to the Union. The General Counsel contends that by such acts and conduct the Respondent has violated the Act.

The Respondent contends that the institution of the employee evaluation system did not constitute a change in conditions of employment requiring the Respondent to bargain with the Union and, that being so, the Respondent was also not under any obligation to supply the Union with the information sought, arguing that the Union thus had not and cannot demonstrate the rel-

[1] The formal papers in this case show that the parties originally filed a stipulation of facts directly with the Board, on October 12, 1982, for decision of the matter, and that the Board, on February 3, 1983, remanded the matters to the Regional Director for further action.

evance of the requested information. (See R. Br., pp. 1–2.)

III. UNION REPRESENTATION

It is stipulated and I find that during the times material herein the Union has been the duly designated exclusive representative for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of all regular full-time and regular part-time employees of the Respondent, excluding meat department employees, managers, assistant managers, watchmen, guards and all supervisors as defined in the Act, in each appropriate unit set forth below:

1. Such employees employed in stores located in Tulsa, Sand Springs, Sapulpa, McAlester and Stillwater, Oklahoma, constitute a separate unit.

2. Such employees employed in stores located at Claremore, Pryor, Tahledquah, Durant, Owasso, Hugo, Bristow, Okemah and Idabel, Oklahoma, constitute a separate unit.

3. Such employees employed in stores located in Bartlesville, Henryetta, Muskogee, Broken Arrow, Wagoner, Okmulgee, Vinita, Sallisaw, Pawhuska, and Cleveland, Oklahoma, constitute separate bargaining units in each location.

At the times material, collective-bargaining agreements were in effect covering each of the above units, which contracts were substantially identical with the exception of effective dates.[2]

IV. THE FACTS

A. *Employee Job Evaluations*

Late in 1981, the Respondent's corporate headquarters began devising a formal written employee evaluation system to be used in all 20 divisions of the Respondent's operations. About January 11, the Respondent directed its Tulsa Division to institute such an employee evaluation system utilizing a form entitled "Safeway Training and Development Appraisal."[3]

Each food clerk in the appropraite units is to be evaluated annually during the month in which the anniversary of the employee's hire falls. After the completed form is shown to the employee, the form is forwarded to the district office where it is reviewed by the district manager and then becomes part of the employee's personnel file. A number of employees in the Tulsa Division have been evaluated using this appraisal form.

According to the stipulation of the parties, "It is anticipated that appraisals will be used by [the Respondent] for general personnel management purposes. The primary purpose of the form is to provide feedback to the employees on their job performance. It is envisioned that the form may be considered by [the Respondent's] officials when selecting an employee for promotions, transfers, and other employee personnel actions."[4]

The affidavit of Bruce Scott, the Respondent's employee and public affairs manager and an admitted agent of the Respondent, which is included in the record by stipulation, explains that "[t]he purpose of the current evaluation forms [sic] is to insure regular performance reviews covering the same behaviors or characteristics, using the same scale of evaluation. This insures the same criteria are used for each employee."

The stipulation of the parties states that "[p]rior to the implementation of the Safeway Retail Clerk Training and Development Appraisal, the Tulsa Division of [the Respondent] had no formal evaluation system. Informal evaluations of employee performances were made and transmitted orally as needed." Scott's affidavit expands on this, saying, "Prior to the use of the new performance evaluation forms, we had no formal or written appraisal process. The only means of informing an employee of their [sic] performance came through inference from the casual comments made by the store manager. Occasionally, something done very well or very poorly might result in a specific discussion (counseling) with the employees. Here again, no documentation or schedule for these performance reviews were kept in a personnel file. However, corrective actions concerning a specific incident would be kept therein. Prior to the existence of the evaluation forms, the Store Managers were responsible for evaluating employees' performance to ensure compliance with company policies and guidelines relating to personnel management. This evaluation was rarely conveyed in any specific format or defined by characteristic. It did not take place on a scheduled basis nor were characteristics that are contained in the new form evaluated at the same time or at all with respect to each employee. The evaluation was only the perception of the Store Manager and was not documented in any way."

B. *The Union's Requests for information—The Respondent's Responses*

The Union, in a letter to the Respondent dated March 23, complaining that the Respondent's employee performance review system was a unilateral change in working conditions without prior notice to or bargaining with the Union, requested that the Respondent meet and bargain concerning the "terms, conditions and effects of this change," and that the new procedure be discontin-

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[2] These findings are derived from the stipulation of the parties. I note, however, that the complaint seems to refer only to the unit set forth as number 1, above. I assume that, nevertheless, the parties, by their stipulation, agree that this matter concerns the employees in all of the units set forth.

[3] Although the form was never discussed with or furnished to the Union, a copy was included in the record in this case. The form provides for grading food clerks in the various units along a sliding scale from "unacceptable" to "excellent" in the following areas: 1. customer relations, 2. personal appearance, 3. employee interaction, 4. attendance, 5. operation of register, 6. monetary transactions, 7. checkstand functions (scaling, baskarts, forms, procedures), 8. cutting, marking, and pricing, 9. stocking, 10. ordering, 11. merchandising, 12. bagging, 13. baskart and bottle/can control, 14. store/work area cleaning, and 15. other. Further explanations of the functions included in each area are set forth in the form. Provision is made in the document for comment by the employee, and comment and recommendations by the supervisor.

[4] The Respondent asserts that the form "is intended primarily as a training device." (Br., p. 5.) However, the fact the the employee's job evaluation is made only annually would seem to diminish its value for that purpose. And the fact that the form is used to transmit a recommendation to the district manager concerning the employee's work performance also indicates a broader "personnel management purpose."

ued during bargaining and that the following information be furnished to the Union: (1) "copies of the instructions, memoranda, manuals, forms, and other written materials issued to management which explain, implement, and facilitate the practice of Employee Performance Reviews issued before on, and after January 1, 1982"; (2) "Copies of any and all instructions, memoranda, manuals, forms, and other written materials issued to management which explained, implemented, and facilitated any system of personnel evaluation utilized by [the Respondent] prior to the institution of Employee Performance Reviews on or about January 1, 1982"; (3) "The names, store assignments, and classifications of any and all members of Local 73R who have been reviewed under the Employee Performance Review system since January 1, 1982"; (4) "Copies of any and all written material retained to record the results of employee performance reviews performed on the individuals identified in the response to Item 3 above"; and (5) "A list of the other Divisions in the Safeway system where employee performance reviews identical to the one implemented on or about January 1, 1982, in the Tulsa Division, has been effected, if any."

In connection with request number 4 above, asking for copies of work appraisals made of unit employees, it is noted that the collective-bargaining agreement between the Respondent and the Union which is contained in the record, provides, in pertinent part:

> ARTICLE 23 — CORRECTIVE ACTION RECORDS
>
> 23.1 Corrective action records and/or similar notices given to employees for any reason shall state the facts on each individual notice in clear and understandable terms. The notice shall also state the remedy expected of the employee.
>
> 23.2 A copy of the notice shall be sent to the union within seven (7) days of issue.

The Respondent answered the Union's requests by letters dated March 30 and April 15, stating that the Union's requests were under review. The Respondent has not agreed to bargain concerning these matters, and has not given the Union the information requested, nor has it given the Union a reason for its failure to bargain or provide the information.

V. ANALYSIS AND CONCLUSIONS

A. *Alleged Unilateral Action*

The Respondent's new, written, detailed system of evaluating employee job performance is a term or conditional of employment which was adopted and put into effect unilaterally, without notice to or bargaining with the Union representing the employees affected. Ordinarily such unilateral conduct would violate Section 8(a)(5) of the Act. See, e.g., *Amsterdam Printing & Litho Corp.*, 223 NLRB 370 (1976). However, the Board has held that an employer does not violate the Act, where, in unilaterally implementing a formal employee job evaluation system, the employer "was simply effectuating a long-existing policy respecting a term of employment." *North Kingstown Nursing Care Center*, 244 NLRB 54, 66 (1979). According to a number of cases, the issue to be resolved is whether the new rule, policy, or practice unilaterally instituted by the employer, without affording the union an opportunity to bargain thereon is "a material, substantial, or significant change" from the prior practice. See, e.g., *Rust Craft Broadcasting of New York*, 225 NLRB 327 (1976) (substitution of timeclocks for manual notations to record time at work held no violation); *Trading Port*, 224 NLRB 980 (1976) (unilateral imposition of job evaluation system not shown to differ materially from procedure in effect previously held no violation); *Clements Wire & Mfg. Co.*, 257 NLRB 1058 (1981) (posting notices of job vacancies in place of past practice of orally soliciting job applicants held no violation); *Wabash Transformer Corp.*, 215 NLRB 546 (1974) (imposition of discharge for violation of long-standing rule held no violation inasmuch as discharge was a sanction inherent in the rule).

The Respondent here contends that the new form and procedure in this case is not a material change from past practice and thus the Respondent's unilateral implementation of the new form and procedure should not be held to violate the Act. Specifically, the Respondent argues (Br., p. 6): "It is hard to imagine a retail store in which the manager does not sit down with his clerks and talk about customer relations, merchandising, and other matters covered by the appraisal form. . . . The 'new' evaluation system is not materially different, just more efficient. The implementation of the [new form] is within the broad area of management discretion to *independently* fashion innovation to make the business more efficient." This last argument is apparently derived from language of the administrative law judge in *Trading Port*, supra. However, this language is so broad that taken out of the factual context in that case, it would serve to set up an entirely new rule—that of efficiency—to justify employer unilateral changes in working conditions. To the contrary, as has been noted, where it is claimed that the new procedure is derived from past practice, the question is whether the new procedure is materially, substantially, or significantly different from the previous practice, not whether it is efficient. (Thus an employer might find it more efficient to change any number of working conditions—e.g., wages, benefits, rest periods, etc.—but this alone would not justify such unilateral action.)

Though the Respondent argues, as set out above, that the store managers must have had a practice of sitting down with employees and evaluating their performance prior to 1982, there is little in the record to support this position. There was certainly no prior formal system of evaluation. It is stated that informal evaluations were made and transmitted orally "as needed." Indeed, it is admitted that, except for occasional special circumstances, employees were informed of their job performance only "through inference from casual comments made by the Store Manager." Nevertheless, according to Scott's affidavit, the store managers were "responsible for evaluating employees' performance to ensure compliance with company policy and guidelines relating to personnel management." There is, however, no indication in

the record as to what the Respondent's prior policies and guidelines might be, other than that they were casual and conveyed to the employees by inference. In addition to the fact that no formal scheduled reviews of employee performance were held prior to January 1982, it appears that documentation of employee performance was placed in an employee's personnel file only on rare occasions, in special circumstances.

Based on these facts it cannot be found that prior to 1982 the Respondent had a fixed policy or practice of evaluating employee work performance. In any event, it is clear that the policy and practice of work evaluation adopted in 1982 constituted a marked change over the prior procedure. Instead of being unstructured and casual as it was previously, the management relationship with the food clerks became highly detailed and structured. Evaluations of employee work habits and performances were scheduled on a regular, recurring basis and became part of the employee's permanent personnel file where it might be used to affect the employee's tenure of employment and advancement with the Respondent.

Based on the above, and the record as a whole, I find that the "Safeway Training and Development Apprisal" put into effect in the Respondent's Tulsa Division in January 1982 constituted a material, substantial, and significant change in the working conditions of employees in that division represented by the Union, and that the Respondent, by adopting and implementing this new policy and practice without giving the Union prior notice and a reasonable opportunity to bargain concerning this change, violated Section 8(a)(5) and (1) of the Act.

B. *Alleged Refusal to Supply Information*

The Union, by letter dated March 23, requested the Respondent to furnish the Union, essentially, with the following information: information with respect to the Respondent's system of evaluating work performance of unit employees prior to January 1982; information concerning the system of employee work performance evaluation installed by the Respondent unilaterally in January 1982; the names of unit employees and copies of job performance evaluations made of employees under the new system of evaluation instituted in January 1982; and a list of the Respondent's divisions in addition to the Tulsa Division where a system of employee evaluation has been instituted similar to that put into effect in January 1982 in the Tulsa Division. None of this material has been supplied to the Union pursuant to the Union's requests. (Of course, a copy of the evaluation form was submitted by the Respondent as an exhibit in this matter. I do not consider this to be in compliance with the Union's request.)

It is well established that a labor organization which has an obligation under the Act to represent employees in a bargaining unit with respect to wages, hours, and working conditions, including collective bargaining and administration of bargaining agreements, is entitled, by operation of the statute, on appropriate request, to such information as may be relevant to the proper performance of that duty. See, e.g., *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61 (3d Cir. 1965). Thus, in *Acme Industrial*, supra, the Supreme Court held that in requiring an employer to furnish information to a union, the Board acts "only upon the probability that the desired information was relevant, and that it would be of use . . . in carrying out [the union's] statutory duties and responsibilities." 385 U.S. at 437. Information concerning terms and conditions of employment of represented employees in the appropriate unit has been held to be presumptively relevant to the union's representative function, but requests for information about employees not represented by the union must be specifically shown to be relevant. *Curtiss-Wright*, supra.

The Respondent argues, however, in effect, that in order to justify the Union's requests for information here, the Respondent's actions must be shown to have a more immediate impact on terms and conditions of employment than occurred in this case. The Respondent asserts: "The effect [on the terms and conditions of employment] must be directed. . . . In general, some overt act of the employer which directly affects employees is necessary before information on subjects outside the usual bargaining areas must be disclosed." (Br., p. 8.) The Respondent suggests that more than "an 'abstract' or 'potential relevance' based on mere suspicion and surmise" is required. (Br., p. 10.)

These arguments misapprehend the situation in this case. It has previously been found that the Respondent is obligated under the Act to negotiate with the Union concerning the adoption and implementation of its new employee job evaluation system with respect to employees represented by the Union, and the Union has requested such bargaining. The Union is therefore entitled to information from the Respondent reasonably relevant and useful to such negotiations. Such information would certainly include the details of the new system, put into effect in January 1982, the forms to be used and instructions to supervision as to the implementation of the new system, as requested by the Union. The Union's further request for similar information as to the methods of job evaluation (if any) in use prior to January 1982 presents a closer case, but the Supreme Court in *Acme*, supra, advises that a liberal "discovery type" standard be used (385 U.S. at 437), so that the bargaining representative shall not be required to perform its statutory duteis as if engaged in a game of "blind man's bluff." (385 U.S. at 438.) Obviously, knowledge of the details of the Respondent's prior practice would be relevant and significant in negotiations about changes in that practice.

Similarly, the Respondent's actual implementation of the new system is reasonably relevant to negotiations concerning the system. It also appears that the Respondent's failure to provide the Union with copies of the performance evaluations made and the names of the employees evaluated arguably violated article 23 of the bargaining agreement in effect, and copies of these evaluations thus would be relevant to the Union's responsibility to administer that agreement.

However, the Union's request for a list of the Respondent's divisions (other than the Tulsa Division) in which the Respondent is utilizing the new job evaluation system is a request for information concerning the Re-

spondent's activities outside the units represented by the Union. In the absence of a showing of a special need for such information, the Union is not entitled to require that the Respondent furnish such a list.

On the basis of the above and on the entire record, I find that the Respondent, by failing and refusing, on request, to provide the Union with the information requested in paragraphs 1, 2, 3, and 4 of the Union's letter to the Respondent of March 23, 1982, violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The bargaining units sets forth below are units appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

> (a) All regular full-time and regular part-time employees of Respondent, excluding meat department employees, managers, assistant manager, watchmen, guards and all supervisors as defined in the Act employed in stores located in Tulsa, Sand Springs, Sapulpa, McAlester and Stillwater, Oklahoma, constitute a separate appropriate unit.
>
> (b) All regular full-time and regular part-time employees of Respondent, excluding meat department employees, managers, assistant managers, watchmen, guards and all supervisors employed in stores located in Claremore, Pryor, Tahlequah, Durant, Owasso, Hugo, Bristow, Okeman and Idabel, Oklahoma, constitute a separate appropriate unit.
>
> (c) All regular full-time and regular part-time employees of Respondent, excluding meat department employees, managers, assistant managers, watchmen, guards and all supervisors employed in stores located in Bartlesville, Henryetta, Muskogee, Broken Arrow, Wagoner, Okmulgee, Vinita, Sallisaw, Pawhuska, and Cleveland, Oklahoma, constitute separate bargaining units in each location.

4. At all times material to this proceeding, the Union was and continues to be the exclusive representative of the employees in the aforesaid units for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. The Respondent, by unilaterally adopting and implementing a new system of employee job evaluation, in January 1982, for employees in the aforesaid appropriate units without notification to and affording the Union an opportunity to bargain thereon, and by failing and refusing to give the Union the information and materials requested in the Union's letter dated March 23, 1982 (except for item numbered 5 therein), with respect to the Respondent's new system of employee job evaluation, violated Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that the Respondent violated the Act by unilaterally adopting and implementing a new system of evaluating employee job performance without affording the Union an opportunity to bargain with respect to that system, and by failing and refusing to provide the Union with certain information and data, on request, to enable the Union to fulfill its obligation to represent the employees involved, it will be recommended that the Respondent shall cease and desist from such unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act.

In particular, it will be recommended that the Respondent provide the Union with certain information and materials requested by the Union; that the Respondent further shall bargain in good faith with the Union on request with respect to the adoption and implementation of any system of evaluating the job performance of employees in an appropriate unit represented by the Union prior to putting such evaluation system into effect; further, that the Respondent, on request by the Union, shall suspend the implementation of any such evaluation system now in effect until the occurrence of any one of the following conditions: (1) failure of the Union to request bargaining with respect to such evaluation system within 45 days from the date of this Order, or (2) agreement between the Respondent and the Union with respect to the adoption and implementation of such evaluation system, reduced to writing and executed by both parties, or (3) the Respondent and the Union have bargained in good faith to a genuine impasse with respect to the adoption and implementation of such evaluation system. It will be further recommended that the Respondent, if requested by the Union, shall withdraw, annual, and expunge from its records any of the job performance evaluations made and recorded since January 1, 1982.

On the foregoing findings of facts and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Safeway Stores, Inc., Broken Arrow, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively in good faith with United Food and Commercial Workers Union 73R, affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC, the Union herein, or any other labor organization which is the exclusive bargaining agent of its employees in an appropriate bargaining unit by:

(1) Unilaterally altering terms and conditions of employment of unit employees without consulting with the Union or any other representative of its employees in

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

such unit and affording such representative a reasonable opportunity to bargain on any such proposed changes.

(2) By refusing or failing to furnish to the Union or its agents, on request, the information and materials set forth in the Union's letter to the Respondent dated March 23, 1982, including copies of the instructions, memoranda, manuals, forms, and other written materials issued to the Respondent's management which explain, implement, and facilitate the practice of employee performance reviews issued before on and after January 1, 1982; copies of any and all instructions, memoranda, manuals, forms, and other written materials issued to the Respondent's management, which explained, implemented, and facilitated any system of personnel evaluation utilized by the Respondent prior to the institution of employee performance reviews on or about January 1982; copies of any and all written material retained to record the resulsts of employee performance reviews performed on employees in an appropriate unit represented by the Union, together with the names, store assignments, and classifications of employees so reviewed, *but not including* the information requested an item numbered 5 in that letter.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights protected by Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the purposes of the Act.

(a) Give the Union the following information and materials described in paragraph 1(a)(2) set forth above in this Order.

(b) Bargain in good faith with the Union, on request, with respect to the adopting and implementation of the system of employee job evaluation which the Respondent put into effect in January 1982, and if an agreement is reached, execute a document setting forth the agreement.

(c) If requested by the Union, suspend the implementation of the system of employee job evaluation which the Respondent put into effect in January 1982, subject to the conditions set forth in the section of this decision entitled "The Remedy."

(d) If requested by the Union, withdraw and expunge from its records any of the job performance evaluations made and recorded since January 1, 1982, in any appropriate unit of employees represented by the Union.

(e) Post at its stores and other operations in its Tulsa, Oklahoma Division copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT put into effect a system of job performance evaluation for employees represented by United Food and Commercial Workers Union Local 73R, affiliated with United Food and Commercial Workers International Union, AFL–CIO–CLC, in the appropriate units set forth below, without first consulting with the Union and giving the Union a reasonable opportunity to bargain on the subject.

WE WILL, if requested by the Union, suspend the system of employee job performance evaluations put into effect in January 1982, pending negotiations with the Union.

WE WILL, if requested by the Union, withdraw and expunge from out records any employee job performance evaluation made of an employee represented by the Union since January 1, 1982.

WE WILL, as directed by the National Labor Relations Board, give to the Union the information and material concerning the Company's employee job performance system put into effect in January 1982, requested by the Union. The appropriate units are:

> All regular full-time and regular part-time employees of the Company, excluding meat department employees, managers, assistant managers, watchmen, guards and all supervisors employed in the following stores:
>
> (a) Tulsa, San Springs, Sapulpa, McAlester, and Stillwater, Oklahoma, constitute one separate appropriate unit.
>
> (b) Claremore, Pryor, Tahlequah, Durant, Owasso, Hugo, Bristow, Okemah, and Idabel, Oklahoma, constitute one separate appropriate unit.
>
> (c) Bartlesville, Henryetta, Muskogee, Broken Arrow, Wagoner, Okmulgee, Vinita, Sallisaw, Pawhuska, and Cleveland, Oklahoma, constitute separate bargaining units in each location.

SAFEWAY STORES, INC.